



**Joint Submission to the Human Rights Council of the United Nations
Third Universal Periodic Review of the Kingdom of Cambodia**

Access to Justice in Cambodia

12th July 2018

Submission by the Cambodian Center for Human Rights (“CCHR”), Destination Justice (“DJ”) and The Cambodian Human Rights and Development Association (“ADHOC”), and endorsed by Advocacy and Policy Institute (“API”), Transparency International Cambodia (“TIC”), and International Freedom of Expression Exchange (“IFEX”).

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1. Introduction

1. This joint submission to the third Universal Periodic Review (“UPR”) of the Kingdom of Cambodia (“Cambodia”) was prepared by the Cambodian Center for Human Rights (“CCHR”),¹ Destination Justice (“DJ”)² and The Cambodian Human Rights and Development Association (“ADHOC”),³ and is endorsed by Advocacy and Policy Institute (“API”),⁴ Transparency International Cambodia (“TIC”),⁵ and International Freedom of Expression Exchange (“IFEX”).⁶
2. During Cambodia’s 2nd UPR, 59 recommendations were made in relation to access to justice, of which 29 specially related to the judicial system, 20 to fair trial rights, 17 to the independence of justice, and 3 to legal aid. Of all these, the Royal Government of the Kingdom of Cambodia (“RGC”) accepted 45 and noted 14. Overall, and as detailed in the present submission, Cambodia still needs to make significant progress to implement the recommendations made.⁷ In 2017-2018, Cambodia ranked 112 out of 113 countries in terms of rule of law,⁸ and scored zero concerning the independence of the judiciary.⁹
3. The present submission covers key components of the right to access justice, including the independence and impartiality of the judicial system, legal aid, access to legal information and fair trial rights.
4. The contents of this submission must be viewed in light of the lack of publicly available and objectively verifiable information/data and the general lack of both government-funded and privately supported research. When state-sponsored information/data is published, there is often no indication as to the research methods or procedure(s) used, hindering any possible verification or analysis. Whilst both some domestic and international non-governmental organizations have attempted to fill this gap, including through daily monitoring of the Court of Appeal to assess its compliance with fair trial rights,¹⁰ the lack of international funding, has significantly impaired these efforts. As a result, a significant part of the submission is based on earlier research, obtained by investigative journalists, or found in comments of public officials. However, it accurately reflects the situation on the ground as experienced by the drafters of this submission, which have long standing experience addressing issues related to access to justice in Cambodia.

2. Independence and Impartiality of the Judiciary

5. During Cambodia’s 2nd UPR cycle, 8% of all recommendations received and 68% of those on to

the administration of justice and fair trial rights¹¹ were related to the independence of the judiciary.¹² Despite this, the situation has significantly worsened rather than improved, with the judicial system being regularly used as a tool to target political opponents,¹³ land-activists,¹⁴ journalists¹⁵ and critical social media users alike.¹⁶

2.1. 2014 Judicial Reform Weakened the Separation of Powers

6. In July 2014, the Law on the Organization and Functioning of the Courts, the Law on the Organization and Functioning of the Supreme Council of the Magistracy and the Law on the Statute of Judges and Prosecutors (“*the three laws on the judiciary*”) were promulgated into law.¹⁷ The drafting of these laws was completed in secret, without any prior publication or consultation with civil society, the public or other stakeholders.¹⁸ They have been widely criticized for significantly weakening the separation of powers and the independence of the judiciary,¹⁹ by effectively giving the executive direct control over the judiciary by increasing the level of influence of the Minister of Justice (“MoJ”) over judges and prosecutors, through its involvement over judicial budgets, appointments, promotions, tenure and removal.²⁰

Recommendation

- i. Amend the three laws on the judiciary to ensure their compliance with the Constitution and international human rights standards, in accordance with the OHCHR recommendations²¹ and with SDGs 16.3 and 16.6, by 2021.

2.2. Lack of Independence and Impartiality

7. Cambodia’s judiciary lacks independence. Most notable illustrations include, but are not limited to:²²
- a. The November 2017 dissolution of the main opposition party on the basis of its leader’s alleged treason,²³ prior to the actual treason trial taking place;²⁴
 - b. The public announcement of a ruling on Kem Sokha’s bail request by political figures, prior to the actual Court’s ruling;²⁵
 - c. The prosecution of political opponents and political analysts for defamation,²⁶ the criminal convictions of Facebook users for negative comments about the ruling party,²⁷ and the absence of any prosecution in cases where public officials use violent rhetoric against protesters or political opponents;²⁸
 - d. The arrest, detention and charging of treason of two journalists working on social and

- corruption issues and who were working for a government-critical news outlet;²⁹
- e. The fact that the Supreme Court's President for the past 10 years, Dith Muntty,³⁰ is listed as the number 15 official on the Cambodian People's Party ("CPP") elite permanent committee and is a member of the CPP's Central and Standing Committees,³¹ and that the Vice-President of the Supreme Court Chiv Keng, the Supreme Court's Prosecutor, Chea Leang, and the Appeal Court's President, You Bunleng, are also on the CPP's Central Committee's list.³²
 - f. The fact that allegations of crimes by public officials and those connected to the government are rarely thoroughly investigated, let alone prosecuted.³³
 - g. The fact that lawyers often engage in bribery with the understanding that it is the only mean to win a case.³⁴ Considering legal aid lawyers are unlikely to pay a substantial bribe, judges are dismissive of their cases and they have an unequal footing with prosecution lawyers. Legal aid lawyers report that they lose most of cases due to not engaging in bribery.³⁵

Recommendations

- ii. Create a publicly accessible grievance mechanism where individuals alleging a lack of independence or impartiality, or alleging corruption or bribery of judicial officials (including police officers and members of the Bar Association of the Kingdom of Cambodia) can file a complaint, and ensure that prompt, thorough, and impartial investigations follow, and that victims are given an effective remedy, in accordance with SDGs 16.5 and 16.6.
- iii. Guarantee the effective and impartial application of the Constitution, legislation and court rulings, through the formal judicial system, in accordance with SDG 16.3.
- iv. Amend the appointment procedure for judges, especially at the Supreme Court, to ensure that judges are independent, apolitical and have no conflict of interest.

2.3. Impunity

8. Impunity remains a serious concern in Cambodia. Cases involving crimes perpetrated against environmental activists such as Chut Wutty,³⁶ land rights activists,³⁷ garment workers such as Khem Sophat,³⁸ and trade unionists such as Chea Vichea and Ros Sovannareth,³⁹ as well as

journalists including Chan Dara, Hang Serei Oudom and Pich Em⁴⁰ are often either not investigated at all or investigated without transparency, independence and impartiality. When perpetrators are convicted, they often receive a lenient sentence or are released early.⁴¹ The 12 July 2016 murder of Kem Ley,⁴² a prominent analyst and government critic, is perhaps the most illustrative example of impunity. The shooter, Oeuth Ang, was convicted of premeditated murder in relation to Kem Ley's death on 23 March 2018, and sentenced to life imprisonment; however, the process that led to his conviction has been heavily criticized.⁴³ The alleged investigations into other suspects, if they have occurred at all, failed to meet the minimum requirements of transparency and independence.⁴⁴

Recommendation

- v. Take all measures to effectively combat impunity for acts of violence against all individuals, particularly human rights defenders, land activists and marginalized groups, as well as independently investigate, prosecute and sanction the acts of violence perpetrated against these groups by State agents and other persons, in accordance with SDG 16.3.

3. Legal Aid in Cambodia

3.1. Cambodia Lacks a Comprehensive Legal Aid Policy

9. International and domestic law guarantees the right to legal aid for criminally accused persons.⁴⁵ The Criminal Procedure Code of the Kingdom of Cambodia outlines the right of an accused to have a lawyer assigned in accordance with the Law on the Bar,⁴⁶ which provides for legal aid for “poor people”.⁴⁷
10. Whilst the MoJ is responsible for managing and administering the justice system, including the provision of legal aid,⁴⁸ no department is tasked or financed to do so. The function has partially been delegated to the Bar Association of the Kingdom of Cambodia (“BAKC”), which all practicing lawyers in Cambodia must be registered with.⁴⁹ The BAKC must reserve funds for “providing income to lawyers who defend poor people”,⁵⁰ to which the MoJ contributes through an annual budget, and in practice assigns legal aid lawyers.⁵¹ However, the division of responsibilities between the MoJ and the BAKC is unclear, particularly regarding the policy and supervisory responsibilities.⁵²

11. Legal representation is only mandatory for criminal cases involving felonies or minors,⁵³ as a result, legal aid is only provided by the BAKC in these mandatory cases,⁵⁴ excluding misdemeanors and failing to meet international standards.⁵⁵
12. Similarly, there is no provision for a comprehensive merit test to assess if legal aid is required for the interests of justice,⁵⁶ thereby failing to ensure legal aid or specialized services for vulnerable groups such as women, Lesbian, Gay, Bisexual, Trans, Intersex and Queer (“LGBTIQ”) people, or ethnic minorities.⁵⁷
13. Cambodia does not have a comprehensive legal aid policy: there is no framework to ensure access to information about legal aid services, specify time for case preparation, monthly caseloads, or qualification criteria for legal aid lawyers.⁵⁸
14. A comprehensive policy is required to address gaps, provide an overarching strategy, and standardize services.⁵⁹ Whilst the Technical Working Group on Legal and Judicial Reform, co-chaired by the MoJ and OHCHR, began a consultative process to develop a legal aid policy in 2018, the process is ongoing.⁶⁰

Recommendations

- vi. By mid-2021, establish or assign a department within the MoJ which is responsible for and resourced to supervise the provision of legal aid.
- vii. Ensure all criminally accused persons, including those accused of both misdemeanors and felonies, have access to legal aid in accordance with the Code of Criminal Procedure of the Kingdom of Cambodia, the ICCPR and SDG 16.3.
- viii. By 2022, finalize and implement a comprehensive legal aid policy, following consultations with relevant stakeholders including civil society.

3.2. Insufficient Legal Aid Budget

15. Between 2014 and 2018, the state-sponsored legal aid budget substantially increased from approximately US\$75,000 to US\$222,000,⁶¹ demonstrating the RGC’s growing commitment to legal aid. Yet, Cambodia’s legal aid budget remains grossly insufficient: it amounts to US\$0.01

per capita, in comparison to US\$0.03 per capita in Thailand and US\$0.19 per capita in China.⁶² In 2017, the BAKC received approximately 5,000 requests for legal aid in mandatory cases, yet the state-sponsored budget only covered 2,000 cases.⁶³

16. The limited budget signifies that lawyers are only able to claim compensation for costs incurred, thereby entailing a pro-bono scheme. On average, US\$50 to US\$70 is reimbursed per case.⁶⁴ The reimbursement process is slow, requires travel to Phnom Penh, and at times, costs cannot be recovered.⁶⁵ Lawyers have reported using their own funds to provide representation, demanded additional funds from clients, or accepted bribes from disputing parties.⁶⁶
17. BAKC-assigned lawyers are not supported to provide legal aid during investigative and appeal stages, or if proceedings are delayed.⁶⁷ Notably, the requirement for legal representation in cases involving a felony or minor puts an obligation on courts to ensure that representation is present before a hearing commences. This has resulted in legal aid lawyers being requested at the time of the hearing to allow trials to proceed.⁶⁸ Therefore, lawyers usually meet their client for the first time at trial, precluding them from preparing an effective defense.⁶⁹
18. The BAKC has called to double or triple the current funding.⁷⁰ Considering a proposal by the BAKC to impose a fee structure of US\$100 per case, approximately US\$500,000 would be required to provide assistance in the 5,000 mandatory cases, without considering misdemeanors.⁷¹
19. To fill the gaps left by the state-sponsored legal aid budget, private pro-bono lawyers and lawyers supported by Non-Governmental Organizations (“NGOs”) also provide legal aid.⁷² However, donor fatigue has resulted in diminishing funds to NGOs for legal aid services.⁷³ In 2017, 37 legal aid lawyers were employed by 15 NGOs, which is 53% less than in 2006.⁷⁴

Recommendation

- ix. Conduct a comprehensive needs assessment to determine the required annual legal aid budget through consultations with relevant stakeholders including civil society and allocate a sufficient legal aid budget in accordance with its findings, which allows for the provision of legal aid at all stages of criminal proceedings, including investigative and appeal stages.

3.3. Limited legal aid lawyers and services

20. Cambodia has a shortage of lawyers in general, and of legal aid lawyers in particular.⁷⁵ In 2017, Cambodia had 1019 registered lawyers,⁷⁶ amounting to six lawyers per 100,000 people, in comparison to an average 85 lawyers per 100,000 people in the EU.⁷⁷ Of those, only 98 lawyers were registered to provide legal aid through the BAKC,⁷⁸ totaling just 1 legal aid lawyer per 163,320 people.⁷⁹ This shortage is exacerbated as few lawyers are willing and able to eschew more lucrative areas of practice in favor of the modest remuneration provided to legal aid lawyers.⁸⁰ The limited number of lawyers is particularly prevalent outside Phnom Penh,⁸¹ which disproportionately impacts those living in rural and remote communities, particularly women⁸² and marginalized groups.
21. The weaknesses of the legal aid system, together with the lack of information regarding legal aid services,⁸³ and the lack of judicial independence,⁸⁴ have contributed to pervasive distrust by the Cambodian public of the judicial system and legal aid lawyers assigned by the BAKC.⁸⁵
22. Overall, the insufficient legal aid system contributes to systemic under-representation, particularly for cases involving misdemeanors and those outside Phnom Penh. BAKC assigned lawyers at times do not present in court, particularly for provincial cases, as they are based in Phnom Penh and significant travel is required.⁸⁶ While monitoring suggests that the majority of defendants before the Court of Appeal are represented by a lawyer,⁸⁷ there is no information available as to whether those were legal aid lawyers. Further, it is likely that the rate of legal representation at the Court of Appeal, located in Phnom Penh, is significantly higher than at provincial courts.⁸⁸
23. Further, neither the MoJ nor the BAKC has established a quality control system.⁸⁹ On average, BAKC appointed lawyers handle 10-15 cases per month, whilst NGO lawyers handle 3 per month.⁹⁰ BAKC lawyers are often young, inexperienced and seeking exposure, yet handle serious cases involving felonies or minors.⁹¹
24. Despite underrepresentation, processes to provide access to remedy when the right to legal aid or the right to an effective defense is undermined do not exist in Cambodia.
25. While paralegals, legal clinics or other institutions could play an essential role in providing legal aid services, the Law on the Bar states that only registered lawyers can provide legal consultation, which is used as grounds to restrict the contribution they can make to the deliverance of legal aid.⁹²

Recommendations:

- x. Increase the number of lawyers registered annually with the BACK according to the country's actual needs, ensuring that bribery or political affiliation do not restrict acceptance of lawyers.
- xi. Amend Article 4 of the Law on the Bar to allow paralegals to provide legal aid services and formalize their role and training requirements by 2020.
- xii. Establish in law processes to provide access to remedy when the right to legal aid is violated by 2020.

4. Access to Legal Information

26. The RGC has commendably recognized access to legal information as a fundamental precondition for proper rule of law⁹³ - as mentioned in the past recommendations in the 2nd UPR Cycle⁹⁴ - in its 2014-2018 National Strategic Plan prioritizing “enhancing access to judicial information”,⁹⁵ and its January 2018 draft law on access to information.⁹⁶ Nevertheless, access to laws and jurisprudence in Cambodia remains limited, irregular, delayed and decentralized. It therefore serves as a key obstacle to effective rule of law.

4.1. Access to laws and regulations is limited and inconsistent

27. Following past recommendations,⁹⁷ the RGC's January 2018 draft law on access to information⁹⁸ acknowledges that it is the State's obligation to update and disseminate information on “laws, regulations, policies, decisions, and duties of public institutions relating to rights, freedoms, obligations, and public interests”.⁹⁹ However, it simultaneously vests public institutions with discretion to “reduce or delay the time frame on [release of] confidential information either in part or in whole“, for up to 25 years, in a wide range of circumstances.¹⁰⁰ This is too vague to satisfy the narrow requirements of international law.¹⁰¹

28. In practice, the RGC lacks a uniform approach to making legal information available. The limited information which is disseminated is scattered across numerous government websites¹⁰² and Facebook pages.¹⁰³ One example is the Royal Gazette Facebook page,¹⁰⁴ which serves as an apparently official channel for disseminating free online editions of certain royal decrees, sub-decrees, proclamations, decisions and circulars from the Royal Cabinet, the Government and

Ministries.¹⁰⁵

29. RGC-led efforts to increase understanding of its laws are similarly limited. The Ministry of Justice, which is responsible¹⁰⁶ for “disseminating knowledge on laws and procedures to the people and providing legal training to increase awareness and implementation for law enforcement officials”,¹⁰⁷ has thus far produced only a few temporary training videos on YouTube.¹⁰⁸ Moreover, while promising, these are aimed solely at officials and not the general population.¹⁰⁹
30. Third parties have endeavored to fill the information gap. These efforts have included failed attempts to assist the government to build a centralized legal database; Civil Society Organizations (“CSOs”)-initiated legal information platforms;¹¹⁰ a practice by legal practitioners and civil servants to share new laws and regulations on Facebook; the development of legal literature;¹¹¹ and frequent INGO or CSO-led trainings. Nonetheless, a paucity of available legal information remains which leaves the general population acutely vulnerable. For example, citizens have reported difficulties determining what the relevant laws are in land disputes,¹¹² and in cases involving women¹¹³ and LGBTIQ people.¹¹⁴
31. The first step to allowing citizens to properly access their legal rights is to disseminate legal knowledge and information through a comprehensive, simple, free and easy-to-use legal database containing legislation¹¹⁵ and jurisprudence. In particular, this would enhance access to justice for vulnerable communities by minimizing the need to pay a professional or travel unnecessarily and comply with SDG 16.10 focusing on access to information.¹¹⁶

Recommendations

- xiii. Enact and ensure that the Law on Access to Information effectively safeguards the right to access to legal information, in full compliance with Cambodia’s international human rights obligations and with SDG 16.10.02.
- xiv. Create a free, accessible and up-to-date official legal information database, including all the laws, decrees, royal decrees, circulars and regulations in Cambodia, by 2021.

4.2. Access to judicial information and decisions is highly circumscribed

32. The RGC National Strategic Plan for 2014-2018 aims to “introduc[e] court register data by

information system” and “enhanc[e] access to judicial information, including on court decisions and proceedings, periodic administrative reports and administrative information regarding pending cases, including status and scheduling information”.¹¹⁷ In practice, however, while some efforts have been made for instance to make court hearing schedules available, key information - in particular, court decisions - remains largely unavailable.

33. While the Constitutional Council regularly publishes its decisions,¹¹⁸ those from other courts are largely impossible to access. This lack of access makes applying legal precedent impossible and hinders lawyers from mounting effective legal defenses. Promisingly however, the Appeal Court has initiated a discussion on publishing decisions with the OHCHR.²³ Greater transparency of decisions would lead to more consistency, legal certainty, and a public perception of greater judicial independence.¹¹⁹
34. To remedy the lack of judicial information and decisions, CSOs and NGOs have been undertaking trial monitoring,¹²⁰ creating programs of education or training in law¹²¹ and publishing handbooks on Cambodian jurisprudence.¹²²

Recommendation

- xv. Publish every new decision of the Supreme Court and the Court of Appeal on a freely accessible online platform by 2021.

4.3. Access to Justice in rural areas is disproportionately limited

35. While there are courts of first instance across Cambodia, there is only one Appeal Court and one Supreme Court, both located in Phnom Penh. As a result, “69% of cases at the Appeal Court [are] heard in absentia”¹²³ and access to justice is disproportionately limited for those outside of the capital. Under the Law on the Organization of the Courts,¹²⁴ the RGC has committed to establishing regional Appeal Courts to limit the cost of accessing courts¹²⁵ and to benefit poor people.¹²⁶ The Ministry of Justice stated in 2015 that it “want[s] people to travel easily to [regional Appeal Courts]”.¹²⁷ Whilst there are currently three under construction, and the main goal is to have seven Appeal Courts across Cambodia, to date there remains only one which is located in Phnom Penh.¹²⁸
36. *Maisons de la Justice*¹²⁹ were established under UNDP’s 2006 “Access to Justice in Cambodia”¹³⁰ program which offered alternative dispute resolution (ADR) options for Cambodians in situations

most commonly including divorce, land disputes, and contracts. This program highlights both the need for legal information on these everyday subjects,¹³¹ and the benefits of Alternative Dispute Resolutions mechanisms (“ADR”)¹³² over the traditional justice system, especially in rural areas or vulnerable communities.¹³³

37. Unfortunately, all *Maisons de la Justice* have been closed since 2015,¹³⁴ their operations plagued by “a high rate of absenteeism by the Maison de la Justice’s chief, a low number of cases received, a lack of information dissemination [owing] to the lack of budget for administrative costs.”¹³⁵ Reimplementing *Maisons de la Justice*, properly financed, would “expand and strengthen the services and use of ADR”.¹³⁶

Recommendations

- xvi. Establish the regional Appeal Courts to increase access to justice in the Cambodian provinces, in accordance with the Law on the Organization of the Courts and ensure their proper operationalization by the end of 2023.
- xvii. Operationalize the *Maisons de la Justice* initiative as a means of accessing legal support and legal information nationwide, by the end of 2022.

5. Fair Trial Rights

5.1. Pre-Trial Detention Remains the Norm¹³⁷

38. While the exceptional character of pre-trial detention in criminal cases is protected under Cambodian law,¹³⁸ in practice, pre-trial detention is quasi-automatic:¹³⁹ for instance, in 2016, 70.6% of detainees were in pre-trial detention, among which 36.5% were awaiting their final judgment.¹⁴⁰ Pre-trial detention is usually lengthy, and many are held without a date for trial having been set.¹⁴¹ Notable cases include the so-called “ADHOC 5” (detained 427 days);¹⁴² Kem Sokha (detained since September 2017);¹⁴³ two former Radio Free Asia journalists Uon Chhin and Yeang Sothearin (detained since November 2017);¹⁴⁴ and Australian filmmaker James Ricketson (detained since June 2017), for which trial dates had not been set as of July 2018.¹⁴⁵ Cambodia’s “war on drugs” has further led to hundreds being jailed.¹⁴⁶ Poor prison conditions, including overcrowding and lack of basic sanitary facilities, render pre-trial detention more difficult.¹⁴⁷ While the authorities have acknowledged that prisons conditions are problematic,¹⁴⁸ no concrete measure has been taken since the last UPR.

39. Judges generally fail to undertake an in-depth, objective and evidence-based assessment of whether detention is justified,¹⁴⁹ despite the 2014 introduction of a form requiring judges to provide reasoning when deciding on detention.¹⁵⁰ Justifications most often provided for detention are flight risk, and the fact that investigations are ongoing,¹⁵¹ with judges consistently failing to assess whether other, less restrictive means (such as bail or judicial supervision) could be used.
40. Pregnant women and mothers of young children are routinely held in pre-trial detention, with no consideration of their situation or of the mother's and child's wellbeing.¹⁵²
41. Similarly, authorities have taken limited steps to adequately consider alternatives to the detention of juveniles,¹⁵³ or to consider the age, capacity and development of juveniles in detention,¹⁵⁴ despite the welcomed adoption of a long-awaited Law on Juvenile Justice.¹⁵⁵ However, in June 2018, the authorities announced the creation of the first youth detention center in the country, scheduled for 2019.¹⁵⁶

Recommendations

- xviii. Promote the greater use of alternatives to pre-trial detention, including judicial supervision,¹⁵⁷ in accordance with UN SDG 16.3.2.
- xix. Ensure that the competent judicial authorities, when ruling on pre-trial detention, give full respect to the letter of the Criminal Procedure Code, which set out the exceptional character of pre-trial detention, and interpret the justifications for pre-trial detention strictly and narrowly.

5.2. The Presumption of Innocence is Routinely Ignored¹⁵⁸

42. Defendants often appear in Court wearing uniforms for convicted prisoners,¹⁵⁹ leading to perceptions of guilt,¹⁶⁰ even though small changes are gradually being observed.¹⁶¹ Further, very few safeguards exist against self-incrimination,¹⁶² and judges seldomly inform the Defendants about this right.¹⁶³ Finally, confessions are often the sole basis for a conviction, despite a number Defendants claiming that they were coerced or tortured into admitting guilt.¹⁶⁴ Such claims are often ignored by the Judges and not investigated.¹⁶⁵ While the Government reportedly created a National Committee Against Torture in 2017¹⁶⁶ which led the UN to remove Cambodia from the list of states failing to comply with Article 17 of the Optional Protocol to the Convention against Torture ("OPCAT").¹⁶⁷ However, there is no indication that this new mechanism is being used.

Recommendations

- xx. Require that all judges inform defendants about the presumption of innocence, including the burden of proof and the protection against self-incrimination, and about their right to state sponsored legal aid;
- xxi. Thoroughly investigate allegations that a confession was not given with free and informed consent; ensure that the burden of proof is on the Prosecution to show that a confession was not obtained under duress, coercion or torture.
- xxii. Allow defendants who did not yet receive a final judgement to appear in Court wearing civilian clothes.
- xxiii. Inform the public about the right to state-sponsored legal aid, including through publications in police offices, prisons and courts buildings.

5.3. The Right to an Effective Defense is Quasi-Inexistent

- 43. As outlined above¹⁶⁸, the right to a lawyer is not fully respected and individuals are not always able to access an effective defense, as a result of the inadequacy of the state-sponsored legal aid system and the general lack of information available to the public about the availability of legal aid.
- 44. The rights to present evidence, to cross examine witnesses and to challenge all evidence against the accused, are often undermined.¹⁶⁹ The burden of proof is often put on the Defense, yet, it is often precluded from presenting evidence, including witnesses,¹⁷⁰ and the incriminating evidence often fails to meet the requisite standard for a finding of guilt.¹⁷¹

Recommendation

- xxiv. Develop clear guidelines regarding the presentation and evaluation of evidence, building on the work of the ECCC,¹⁷² and ensure that all judges are trained accordingly.¹⁷³

5.4. Reasons are not Given for Judgements

45. Judgements are frequently not delivered within a reasonable time period and, in some instances, have been postponed indefinitely.¹⁷⁴ Further, judges often fail to provide not only the legal basis, but also the evidence they rely upon for their ruling.¹⁷⁵

46. Although judgements are rarely overturned, the presence of an Appeal Court provides an avenue to challenge a verdict of guilt.¹⁷⁶ While the fact that there is only one Appeal Court for the whole country constitutes an impediment to a Defendant's right to appeal, the authorities have announced the creation of seven Appeal Courts across the Kingdom.¹⁷⁷

Recommendation

xxv. Drawing from the practice of the ECCC,¹⁷⁸ establish a framework in which judges are obligated to inform and explain the legal and evidential reasons behind their verdict and ensure that reasoned written judgments are given to the defendant.

5.5. Women Continue to be Disproportionately Affected¹⁷⁹

47. The number of women in the judiciary is drastically low: 14% of all judges, 12% of Prosecutors, and 20% of lawyers are women.¹⁸⁰ Such inequality in accessing judicial professions has an impact on women defendants, victims and witnesses. Men's dominance over the judicial system contributes to a hostile environment where victims of abuse or sexual violence are often re-traumatized or blamed.¹⁸¹

48. Domestic violence is often not recognized as a criminal offence¹⁸² and many women choose not to bring charges, or drop complaints, heightening impunity for gender-based crimes. Notably, only 20% of cases of domestic violence monitored during the beginning of 2014 and the end of 2016 resulted in criminal proceedings.¹⁸³ Impunity also prevails for the most violent cases of gender-based violence: for example, the death of sex worker Pen Kunthea, or of singer San Sreylai were never resolved.¹⁸⁴

49. However, a draft law to set minimum standards in connection to gender-based violence, covering topics such as emergency medical support, protection orders, and access to remedy, is reportedly being prepared by the Ministry of Women's Affairs and includes consultations with relevant NGOs.¹⁸⁵

Recommendations

xxvi. Drawing from the ECCC, adopt legislation protecting the right of victims of gender-

based violence in the context of legal proceedings, focusing on respect of privacy as well as legal and psychological support, in compliance with SDGs 5.2 and 5. C.¹⁸⁶

- xxvii. Adequately train judicial actors on gender-specific issues, including Sexual Orientation Gender Identity and Expression and Sex Characteristics (“SOGIESC”), in accordance with SDGs 5.2 and 5. C., by 2021.

*5.6. Juveniles Lack Protection*¹⁸⁷

50. A minor of age 14 and over may be held criminally liable and held in detention.¹⁸⁸ In 2016, 903 out of 21,989 prisoners were minors.¹⁸⁹ A Law on Juvenile Justice, constituting the first measure of this kind in Cambodia, adopted in July 2016, came into force in January 2017.¹⁹⁰ However, the RGC has failed to adopt the measures it prescribes, such as the creation of a separate juvenile court, of alternative measures for detention, and the adoption of concrete measures to protect juvenile’s privacy. While the law requires trial proceedings in cases involving juveniles to be held in sessions closed to the public,¹⁹¹ measure to protect the juveniles’ privacy are seldomly taken: in 2017, the Appeal Court took such measures in only one of the 35 cases monitored by CCHR.¹⁹²

Recommendations

- xxviii. Adopt urgent measures to ensure respect for juvenile’s privacy in judicial proceedings, as provided by the Law on Juvenile Justice, by 2020.

- xxix. Limit pre-trial detention of juveniles to exceptional cases when no other alternative exists and ensure that, in such case, all necessary measures are taken to respect the juvenile’s rights.

ENDNOTES

¹ The Cambodian Center for Human Rights (“CCHR”), founded in 2002, is a non-aligned, independent, non-governmental organization (“NGO”) that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout the Kingdom of Cambodia (“Cambodia”). CCHR’s vision is of a non-violent Cambodia in which people can enjoy their fundamental human rights, are empowered to participate in democracy, and share equally the benefits of Cambodia’s economic development. Since the first cycle, CCHR has participated actively in the UPR Process. In preparation for Cambodia’s Second UPR in January 2014, CCHR produced two joint-submissions, and CCHR staff participated in pre-sessions in Geneva. Following the adoption of the Outcome Report in June 2014, CCHR co-organized a two-day National Consultation in Phnom Penh. In 2017, CCHR and the United Nations Office of the High

Commissioner for Human Rights in Cambodia (“OHCHR Cambodia”) cooperated with UPR Info, based in Geneva, and with the government’s Cambodian Human Rights Committee, to co-organize Cambodia’s ‘Mid-Term Universal Periodic Review National Consultation and Assessment Workshop,’ which was held on 29 and 30 June 2017 in Phnom Penh. Ahead of the Third Universal Periodic Review of Cambodia to be held in 2019, CCHR, UPR Info, and OHCHR Cambodia organized a two-day ‘National Consultation Workshop on CSOs submissions’, a two-day ‘follow-up Workshop on CSOs submissions’ in Phnom Penh’ and one day ‘workshop for the validation of CSO Submissions for the Third UPR of Cambodia’.

² Destination Justice (“DJ”) is a social change organization. We are changemakers who believe that justice is key to a peaceful society - particularly a society where people can resolve their issues by resorting to independent, fair and transparent justice; a society where laws are made by the people, for them and freely accessible to them; and furthermore, a society where everybody is equal no matter who they are, what they think, or who they love.

Destination Justice previously submitted a joint-submission for the Second Universal Periodic Review of France.

³ The Cambodian Human Rights and Development Association (“ADHOC”) was founded by a group of former political prisoners in December 1991, after the signing of the Paris Peace Agreements on 23 October 1991. ADHOC is an independent, non-partisan, non-profit and non-governmental organization. For more than 26 years, ADHOC has worked to address the absence of basic rights, freedoms and liberties in Cambodia by providing people with knowledge and understanding of human rights, law and democracy, and how to defend their rights and freedoms. ADHOC is comprised of two sections: The Human Rights and Land Rights Section, and the Women’s and Children’s Rights Section. ADHOC’s Vision is a society that respects human rights and law. ADHOC’s Mission is to strengthen the capacity of ordinary citizens, enable them to defend their own rights and lobby and advocate for better governance and full respect for human rights that every citizen can practice. ADHOC’s Goals are (1) to strengthen the capacity of ordinary citizens to claim their rights and to assist victims of human rights abuses in their quest for justice; and (2) to help ordinary citizens to assert their human rights fully by lobbying and advocating for improvement and enhancement of laws, institutions and law enforcement.

⁴ Advocacy and Policy Institute (“API”)’s mission is to serve the long term democratic and social development needs of Cambodia through the empowerment of people to interact with their Government to protect their rights and provide for their needs.

⁵ Transparency International Cambodia (“TIC”)’s mission is to work together with individuals and institutions at all levels to promote integrity and reduce corruption in Cambodia.

⁶ IFEX (established 1992) is the global network of 118 organisations working to promote and defend the right to freedom of expression and information in over 60 countries worldwide. Through its local members, IFEX supports awareness raising, campaigning and advocacy on a range of issues related to freedom of expression and information in Cambodia.

⁷ See **Annex 2**. Recommendation 118.95: Strengthen the means at the disposal of the justice system and make it more accessible to indigent persons. (Senegal).

⁸ Measures of the rule of law adherence across the globe. In “Rule of Law Index 2017-2018”, World Justice Project, 2018, p.6, available at https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf (last visited 4 July 2018).

⁹ “The judiciary is marred by corruption and a lack of independence. Judges have played a central role in the government’s ability to pursue charges against a broad range of opposition politicians.” In “Freedom in the World 2018, Cambodia”, Freedom House, 2018, para. F1, available at <https://freedomhouse.org/report/freedom-world/2018/cambodia> (last visited 4 July 2018).

¹⁰ “Fair Trial Rights Monitoring Project”, Cambodian Center for Human Rights, available at https://www.cchrcambodia.org/index_old.php?url=project_page/project_page.php&p=project_profile.php&id=3&pro=FTR&pro_id=107&show=show (last visited 4 July 2018); “Cambodian Trial Monitoring Database”, CCHR, available at <http://tmp.sithi.org/> (last visited 4 July 2018).

¹¹ Cambodia received a total of 205 recommendations. Of these, 25 related broadly to the administration of justice whilst 17 of these related specifically to independence of the judiciary.

¹² Recommendations 118.24, 118.79-118.92, 118.133, 119.20 In United Nations Office of the High Commissioner on Human Rights, *Universal Human Rights Index*, Advanced Search, filter by D51 “administration of justice and fair trial”, available at <http://uhri.ohchr.org/en/search/results?searchtype=Annotations&symbol=A/HRC/26/16&ResultsExpanded=false> (last visited 4 July 2018).

¹³ See **Annex 1**, cases of former Cambodia National Rescue party (“CNRP”) lawmaker Um Sam An (**entry 43**), former CNRP Senator Thak Lany (**entry 40**), former CNRP leader Kem Sokha (**entry 17**), former CNRP leader Sam Rainsy (**entry 33**), Former Funcinpec official and ex-Deputy Prime Minister Lu Lay Sreng (**entry 23**).

¹⁴ See **Annex 1**, cases of land activist and HRD Tep Vanny (**entry 39**), of two Mother Nature Cambodia environmental activists, Doem Kundy and Hun Vannak (**entry 14**).

¹⁵ See **Annex 1**, cases of former Radio Free Asia (“RFA”) journalists Oun Chhin and Yeang Sothearin (**entry 44**), former Cambodia Daily journalists Aun Pheap and Zsombor Peter (**entry 2**), former Cambodia Daily Deputy Publisher Deborah Krisher-Steele, (**entry 10**), former RFA reporter Chun Chanboth (**entry 8**).

¹⁶ See **Annex 1**, cases of Leng Seng Hong, the head of the Federation of Cambodian Intellectuals and Students, (**entry 22**), labor activist Sam Sokha (**entry 34**), San Rotha (**entry 35**). Since the murder of the political commentator and activist Kem Ley, several people have been arrested and convicted of incitement for accusing the Cambodian Government of being responsible for the murder. For instance, in January 2018, a woman who uses the name “Heng Leakhana” on

Facebook was sentenced to a year in prison for "*incitement to commit a felony*" for a live video posted in July 2017 in which she accused Prime Minister Hun Sen of killing political analyst Kem Ley. See Niem Chheng, "Woman who Accused Hun Sen of Kem Ley Assassination on Facebook Sentenced", The Phnom Penh Post, 11 January 2018, available at <https://www.phnompenhpost.com/national/woman-who-accused-hun-sen-kem-ley-assassination-facebook-sentenced> (last visited 4 July 2018). Hin Vansreypov (**entry 13**). A concerning trend is that over the reporting period, individuals have been charged for Facebook posts which sometimes date from several years back, which seems to indicate that the authorities are monitoring the web for contents. In one example, a man was arrested and charged with "*incitement*" in September 2017 for a video of a song criticizing the Prime Minister's policies posted on his Facebook in 2013. In Mech Dara & Ananth Baliga, "Man Charged Over Song Criticising Hun Sen", The Phnom Penh Post, 24 September 2017, available at <https://www.phnompenhpost.com/national/man-charged-over-song-criticising-hun-sen> (last visited 4 May 2018).

In May 2018, the Government adopted an inter-ministerial regulation (*prakas*) which instructed the Ministry of Posts and Telecommunications to "*block or close*" websites and social media pages containing content "*considered as incitement, breaking solidarity, discrimination and willfully creating turmoil leading to undermining national security, public interest and social order*". It also required all Internet Service Providers are now obliged to "*install software programs and equip internet surveillance tools to easily filter and block any social media accounts or pages*" deemed illegal. The Government also announced all domestic and international internet traffic would pass through a Data Management Centre ("DMC") created by the state-owned Telecom Cambodia, which creates cause for concerns regarding invasion of privacy and restrictions on freedom of expression online. In Mech Dara & Hor Kimsay, "Ministry's plan for net sparks fears", The Phnom Penh Post, 21 May 2018, available at <https://www.phnompenhpost.com/national/ministries-plan-net-sparks-fears> (last visited 4 July 2018); Mech Dara & Hor Kimsay, "Three ministries set up web-monitoring group to look out for 'fake news'", The Phnom Penh Post, 7 June 2018, available at <https://www.phnompenhpost.com/national/three-ministries-set-web-monitoring-group-look-out-fake-news> (last visited 4 July 2018). These have been heavily condemned as violating freedom of expression; See "Civil Society Rejects Government Attack on Freedom of Expression", Joint Statement, 8 June 2018, available at <https://www.licadho-cambodia.org/pressrelease.php?perm=434> (last visited 4 July 2018).

¹⁷ *Law on the Organization and Functioning of the Courts*, [Unofficial translation], 16 May 2014, available at http://www.sithi.org/temp.php?url=law_detail.php&id=260&lg= (last visited on 4 July 2018); *Law on the Organization and Functioning of the Supreme Council of the Magistracy*, N° 941222, publish 17 September 2011, available at http://www.cambodiainvestment.gov.kh/law-on-the-organization-and-function-of-the-supreme-council-of-magistracy_941222.html (last visited 4 July 2018); *Law on the Statute of Judges and Prosecutors*, [Unofficial translation], available at [http://www.sithi.org/judicial/docs/Judicial Laws/Draft Law on the Statute of Judges and Prosecutors NA_Eng.pdf](http://www.sithi.org/judicial/docs/Judicial%20Laws/Draft%20Law%20on%20the%20Statute%20of%20Judges%20and%20Prosecutors%20NA%20Eng.pdf) (last visited 4 July 2018).

¹⁸ Press Release, "Cambodia: Lack of consultation on key laws sets worrying pattern for future legislation, warns UN expert", OHCHR, 27 May 2014, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14648&LangID=E> (last visited 4 July 2018).

¹⁹ See *Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards*, OHCHR Cambodia, May 2014, available at <https://bit.ly/2lcL3M1> (last visited 4 July 2018); *Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards*, OHCHR Cambodia, May 2014, available at <https://bit.ly/2yiq83t> (last visited 4 July 2018); *Comments on certain provisions of the draft Law on the organisation of courts in relation to international human rights standards*, OHCHR Cambodia, May 2014, available at <https://bit.ly/2tdgRnN> (last visited 4 July 2018); Legal Analysis, "Three Draft Laws Relating to the Judiciary", CCHR, May 2014, available at [https://cchrcambodia.org/admin/media/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_\(ENG\).pdf](https://cchrcambodia.org/admin/media/analysis/english/2014_06_17_CCHR_Analysis_of_the_Draft_Laws_on_Judicial_Reforms_(ENG).pdf) (last visited 4 July 2018); Robert Carmichael, "Legal Experts: Cambodia Judicial Laws of 'Deep Concern'", Voice of America, 15 July 2014, available at <https://www.voanews.com/a/legal-experts-say-cambodia-judicial-laws-of-deep-concern/1957799.html> (last visited 4 July 2018).

²⁰ *Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 "Independence of the judiciary"; *Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 "Composition of the SCM"; *Comments on certain provisions of the draft Law on the organisation of courts in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 "Independence of the courts";

See also "Three Draft Laws Relating to the Judiciary", Legal Analysis, CCHR, May 2014, pp. 3-6, 8-10. "Judicial Reform", Briefing Note, CCHR, October 2014, available at https://cchrcambodia.org/admin/media/analysis/english/CCHR%20Briefing_Note_Judicial%20Reform_ENG_2014%E2%80%8B.pdf (last visited 4 July 2018); "Justice versus corruption. Challenges to the independence of the judiciary in Cambodia," International Bar Association's Human Rights Institute, September 2015. p. 17, available at <https://globalanticorruptionblog.com/2015/10/12/justice-v-corruption-challenges-to-the-independence-of-the-judiciary-in-cambodia/> (last visited 4 July 2018); Robert Carmichael, "Legal Experts: Cambodia Judicial Laws of 'Deep Concern'", Voice of America, 15 July 2014.

²¹ *Comments on certain provisions of the draft Law on the status of judges and prosecutors in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 "Independence of the judiciary"; *Comments on certain provisions of the draft Law on the Supreme Council of Magistracy in relation to international human rights standards*, OHCHR Cambodia, May 2014, Part 2 "Composition of the SCM"; *Comments on certain provisions of the draft Law on*

the organisation of courts in relation to international human rights standards, OHCHR Cambodia, May 2014, Part 2 “Independence of the courts”.

²² See also “Freedom in the World 2018, Cambodia”, Freedom House, 2018, para. F1,

²³ Ben Sokhean, “Breaking: Supreme Court rules to dissolve CNRP”, The Phnom Penh Post, 16 November 2017, available at <https://www.phnompenhpost.com/national/breaking-supreme-court-rules-dissolve-cnrp> (last visited 4 July 2018).

²⁴ At the time of writing, no trial date has been set for Kem Sokha. Kem Sokha was arrested on 3 September 2017, he was charged with treason and remains in pre-trial detention. See Annex 1 (entry 16); see also Niem Chheng & Ananth Baliga, “Kem Sokha’s pre-trial detention extended by six months”, The Phnom Penh Post, 5 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-pre-trial-detention-extended-six-months> (last visited 4 July 2018); Niem Chheng & Ananth Baliga, “Kem Sokha’s detention upheld as guards scuffle with ex-leader’s supporters outside courthouse”, The Phnom Penh Post, 27 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-detention-upheld-guards-scuffle-ex-leaders-supporters-outside-courthouse> (last visited 4 July 2018).

²⁵ On 27 March 2018, Prime Minister Hun Sen publicly stated that he did not believe Mr Sokha would be released, and admitted that had ordered his arrest as no one would have dared to arrest the former opposition leader had he not done so. See Khy Sovuthy, “Appeal Court upholds Kem Sokha’s detention,” Khmer Times, 28 March 2018, available at <https://www.khmertimeskh.com/50116382/appeal-court-upholds-kem-sokhas-detention/> (last visited 24 April 2018). Shortly after, the Appeal Court rejected Kem Sokha’s request for bail. See Niem Chheng & Ananth Baliga, “Kem Sokha’s detention upheld as guards scuffle with ex-leader’s supporters outside courthouse,” The Phnom Penh Post, 27 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-detention-upheld-guards-scuffle-ex-leaders-supporters-outside-courthouse> (last visited 4 July 2018). See Annex 1 (entry 17).

²⁶ See Annex 1, cases of political analyst and commentator Kim Sok (entry 20), former CNRP leader Sam Rainsy (entry 33), former CNRP Senator Thak Lany (entry 40), CNRP Commune Candidate in Ansar Chambak commune, Krakor district, Pursat Province Khin Samorn (entry 19), former Head of the Human Rights and Legal Aid Section at the Cambodian Human Rights and Development Association (“ADHOC”) and Deputy Secretary-General of the National Election Committee (“NEC”), Ny Chakrya, (entry 26). Several individuals were charged for “death threats” over Facebook posts threatening the life of the Prime Minister, See Annex 1 cases of Pich Roth Tha (entry 30); Rom Chamroeun, (entry 31); Ven Sopheap (entry 45).

²⁷ See Annex 1, cases of Leng Seng Hong, the head of the Federation of Cambodian Intellectuals and Students, (entry 22), labor activist Sam Sokha (entry 34), San Rotha (entry 35).

Since the murder of the political commentator and activist Kem Ley, several people have been arrested and convicted of incitement for accusing the Cambodian Government of being responsible for the murder. For instance, in January 2018, a woman who uses the name “Heng Leakhana” on Facebook was sentenced to a year in prison for “incitement to commit a felony” for a live video posted in July 2017 in which she accused Prime Minister Hun Sen of killing political analyst Kem Ley. See Niem Chheng, “Woman who Accused Hun Sen of Kem Ley Assassination on Facebook Sentenced”, The Phnom Penh Post, 11 January 2018. A concerning trend is that over the reporting period, individuals have been charged for Facebook posts which sometimes date from several years back, which seems to indicate that the authorities are monitoring the web for contents. In one example, a man was arrested and charged with “incitement” in September 2017 for a video of a song criticizing the Prime Minister’s policies posted on his Facebook in 2013. In Mech Dara & Ananth Baliga, “Man Charged Over Song Criticising Hun Sen”, The Phnom Penh Post, 24 September 2017.

²⁸ Violent rhetoric used by government official against political opponents and critics, such as threats to beat protesters with Bamboo sticks, or asking them to prepare their coffins, have not been subject to prosecution, See e.g. Mech Dara, “Cambodia Defends Call for Protesters to be Beaten with Bamboo”, The Jakarta Post, 7 August 2017, available at <http://www.thejakartapost.com/seasia/2017/08/07/cambodia-defends-call-for-protesters-to-be-beaten-with-bamboo.html> (last visited 4 July 2018); Van Roenun, “‘Prepare Your Coffin’: Hun Sen Repeats Bloody Power Promise”, The Cambodia Daily, 22 June 2017, available at <https://www.cambodiadaily.com/news/prepare-coffin-hun-sen-repeats-bloody-power-promise-131626/> (last visited 4 July 2018); Khun Narim, “Tea Banh warns protesters they face legal action”, Khmer Times, 10 August 2017, available at <https://www.khmertimeskh.com/5077548/tea-banh-warns-protesters-face-legal-action/> (last visited 18 June 2018).

²⁹ See Annex 1, case of Former RFA journalists Uon Chhin and Yeang Sothearin (entry 44).

³⁰ “www.supremecourt.gov.kh/index.php/km/about-us/supreme-court/judges”, Official Website of the Cambodian Supreme Court, available at <http://www.supremecourt.gov.kh/index.php/km/about-us/supreme-court/judges> (last visited 4 July 2018); Dith Muntly was appointed in June 1998. In “New Supreme Court Chief Justice Appointed”, The Phnom Penh Post, 5 June 1998, available at <https://www.phnompenhpost.com/national/new-supreme-court-chief-justice-appointed> (last visited 4 July 2018).

³¹ Mech Dara & Daphne Chen, “Analysis: Judge who will decide the fate of the CNRP is a trusted member of the CPP”, The Phnom Penh Post, 15 November 2017, available at <https://www.phnompenhpost.com/national-post-depth-politics/analysis-judge-who-will-decide-fate-cnrp-trusted-member-cpp> (last visited 4 July 2018). The article further notes Muntly’s involvement in other controversial decisions including, *inter alia*, to uphold a politically tinged incitement conviction against former opposition leader Sam Rainsy in 2011, as well as a defamation conviction against senior opposition lawmaker Mu Sochua in 2010.

³² List of the Supreme Court’s judges, available at <http://www.supremecourt.gov.kh/index.php/km/about-us/supreme-court/judges> (last visited 4 July 2018); “CPP releases list of 342 new members of the Central Committee”, Fresh News

Asia, 21 January 2018, available at <http://en.freshnewsasia.com/index.php/en/6995-2018-01-21-05-26-28.html> (last visited 4 July 2018) where Chiv Keng is listed in entry 270, You Bunleng, entry 271, and Chea Leng, 272, under the Commission K-18.

³³ For instance, in April 2018, the Appeal Court rejected a plea from **two Boeung Kak activists to reopen an investigation into a nighttime attack on lake residents**, journalists and others in 2013 at Phnom Penh's Wat Phnom by thugs and plainclothes police officials. The Phnom Penh Municipal Court had provisionally charged unnamed individuals for intentional violence and had questioned some of the lake residents and Daun Penh officials, but an investigating judge dropped the charges. The Boeung Kak lawsuit also named four Daun Penh district officials, whom they claimed were at the crackdown, *see* Kim Sarom & Ananth Baliga, "Court rejects activists' appeal to reopen case," The Phnom Penh Post, 5 April 2018, available at <https://www.phnompenhpost.com/national/court-rejects-activists-appeal-reopen-case> (last visited 4 July 2018); Over a year after **sex worker, Pen Kunthea**, drowned in a case implicating Daun Penh district security guards, no one has been held accountable for her death, despite numerous calls by women's rights activists and former opposition lawmakers for an independent investigation, *see* **Annex 1 (entry 28)**; *see also* Leonie Kijewski, "Sex worker's death still unpunished," The Phnom Penh Post, 4 January 2018, available at <https://www.phnompenhpost.com/national/sex-workers-death-still-unpunished> (last visited 24 April 2018).

One notable example is that of three members of the Prime Minister's bodyguard unit who attacked former Cambodia National Rescue Party (CNRP) lawmakers Nhay Chamroeun and Kong Sophea in October 2015 before the National Assembly. All three were found guilty of intentional violence with aggravating circumstances and sentenced to 4 years in prison, with 3 suspended. They were released in November 2016 after serving 12 months, and two were later promoted within the army; *see* **Annex 1 (entry 24)**; *see also* Mech Dara & Shaun Turton, "Bodyguard Unit trio released one year after MP beatings", The Phnom Penh Post, 7 November 2016, available at <https://www.phnompenhpost.com/national/bodyguard-unit-trio-released-one-year-after-mp-beatings> (last visited 4 July 2018); Ben Sokhean, "MPs beaten outside National Assembly in 2015 appeal", The Phnom Penh Post, 21 March 2018, available at <https://www.phnompenhpost.com/national/mps-beaten-outside-national-assembly-2015-appeal> (last visited 4 July 2018); Mech Dara & Shaun Turton, "Third member of PM's Bodyguard Unit seen kicking head of MP promoted", The Phnom Penh Post, 26 January 2017, available at <https://www.phnompenhpost.com/national/third-member-pms-bodyguard-unit-seen-kicking-head-mp-promoted> (last visited 4 July 2018); *for background see* "Nhay Chamroeun and Kong Sophea Timeline", Asian Parliamentarians for Human Rights, March 2017, available at https://aseanmp.org/wp-content/uploads/2017/03/APHR_Cambodia-MPs-Report_Nhay-Chamroeun-Kong-Sophea-Timeline.pdf (last visited 4 July 2018).

The 2012 murder of environmental activist Chut Wutty was never fully and objectively investigated, *see* **Annex 1 (entry 9)**. The police forces accused of intentional violence against garment workers, including trade unionists in 2014 were never investigated, *see also* the cases of garment workers Khem Sophat (**entry 18**), Chea Vichea (**entry 5**), Ros Sovannareth (**entry 32**); *see also* Send David, "Hopes fade for protest victims", Khmer Times, 29 August 2017, available at <https://www.khmertimeskh.com/5080415/hopes-fade-protest-victims/> (last visited 4 June 2018). Attacks against journalists are also seldomly investigated or prosecuted, *see e.g.* **Annex 1**, cases of journalists Chan Dara (**entry 3**), Hang Serei Oudom (**entry 12**), Suon Chan (**entry 37**), Taing Try (**entry 38**), Chour Chetharith (**entry 7**), Dok Sokhan (**entry 11**), Ou Saroeun (**entry 27**), Pich Em (**entry 29**), Chet Duong Daravuth (**entry 6**), Thun Bun Ly (**entry 42**), Thou Char Mongkol (**entry 41**), Nun Chan (**entry 25**).

³⁴ *Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study*, International Commission of Jurists (ICJ), October 2017, p. 18; *Justice versus corruption: Challenges to the independence of the judiciary in Cambodia*, IBAHRI, September 2015, p. 8.

³⁵ *Justice versus corruption: Challenges to the independence of the judiciary in Cambodia*, IBAHRI, September 2015, p. 47.

³⁶ *See* **Annex 1**, case of environmental activist Chut Wutty (**entry 9**); *see also* Rachel Nuwer, "Wildlife Watch - Illegal Logging Has Become More Violent Than Ever", National Geographic, 3 February 2016, available at <https://news.nationalgeographic.com/2016/02/160202-Illegal-loggers-murders-violence-defending-land/> (last visited 4 July 2018); "Cambodian forest defenders killed after confronting illegal loggers", The Guardian, 31 January 2018, available at <https://www.theguardian.com/environment/2018/jan/31/cambodian-forest-defenders-killed-after-confronting-illegal-loggers> (last visited 4 July 2018); Human Rights Defender Alert, "Environmental activist Ven Aet was shot at in Areng Valley, but sustained no injury", CCHR, 17 May 2018, https://cchrcambodia.org/index_old.php?url=media/media.php&p=alert_detail.php&alid=71&id=5&lang=eng (last visited 4 July 2018).

³⁷ Amelia Woodside & Khouth Sophak Chakrya, "Land activists 'under threat'", The Phnom Penh Post, 18 April 2014, available at <https://www.phnompenhpost.com/national/land-activists-%E2%80%98under-threat%E2%80%99> (last visited 4 July 2018); *see also*: in April 2018, the Appeal Court rejected a plea from **two Boeung Kak activists to reopen an investigation into a nighttime attack on lake residents**, journalists and others in 2013 at Phnom Penh's Wat Phnom by thugs and plainclothes police officials. The Phnom Penh Municipal Court had provisionally charged unnamed individuals for intentional violence and had questioned some of the lake residents and Daun Penh officials, but an investigating judge dropped the charges. The Boeung Kak lawsuit also named four Daun Penh district officials, whom they claimed were at the crackdown, *see* Kim Sarom & Ananth Baliga, "Court rejects activists' appeal to reopen case," The Phnom Penh Post, 5 April 2018.

³⁸ See **Annex 1**, case of garment worker Khem Sophat (**entry 18**); See also Send David, “Hopes fade for protest victims”, Khmer Times, 29 August 2017, available at <https://www.khmertimeskh.com/5080415/hopes-fade-protest-victims/> (last visited 4 July 2018).

³⁹ See **Annex 1**, cases of Chea Vichea (**entry 5**), Ros Sovannareth (**entry 32**).

⁴⁰ See **Annex 1**, cases of journalists Chan Dara (**entry 3**), Hang Serei Oudom (**entry 12**), Suon Chan (**entry 37**), Taing Try (**entry 38**), Chour Chetharith (**entry 7**), Dok Sokhan (**entry 11**), Ou Saroeun (**entry 27**), Pich Em (**entry 29**), Chet Duong Daravuth (**entry 6**), Thun Bun Ly (**entry 42**), Thou Char Mongkol (**entry 41**), Nun Chan (**entry 25**).

⁴¹ One notable example is that of three members of the Prime Minister’s bodyguard unit who attacked former Cambodia National Rescue Party (CNRP) lawmakers Nhay Chamroeun and Kong Sophea in October 2015 before the National Assembly. All three were found guilty of intentional violence with aggravating circumstances and sentenced to 4 years in prison, with 3 suspended. They were released in November 2016 after serving 12 months, and two were later promoted within the army; See **Annex 1 (entry 24)**; See also Mech Dara & Shaun Turton, “Bodyguard Unit trio released one year after MP beatings”, The Phnom Penh Post, 7 November 2016; Ben Sokhean, “MPs beaten outside National Assembly in 2015 appeal”, The Phnom Penh Post, 21 March 2018; Mech Dara & Shaun Turton, “Third member of PM’s Bodyguard Unit seen kicking head of MP promoted”, The Phnom Penh Post, 26 January 2017; for background see “Nhay Chamroeun and Kong Sophea Timeline”, Asian Parliamentarians for Human Rights, March 2017.

⁴² See **Annex 1 (entry 16)**, Case Profile, “Kem Ley: Breaking down the façade of justice”, IFEX, 21 September 2017, available at <https://www.ifex.org/noimpunity/cases/kem-ley-no-impunity/> (last visited 4 July 2018).

⁴³ “Former Soldier Admits to Killing Cambodian Political Analyst”, Radio Free Asia, 1 March 2017, available at <https://www.rfa.org/english/news/cambodia/former-soldier-admits-to-killing-cambodian-political-analyst-03012017160256.html> (last visited 4 July 2018); Niem Chheng & Shaun Turton, “‘Choub Samlab’ gets life in prison”, The Phnom Penh Post, available at <https://www.phnompenhpost.com/national/choub-samlab-gets-life-prison> (last visited 4 July 2018); Ouch Sony & George Wright, “Kem Ley Killer Gets Life; Investigation Still Open”, The Cambodia Daily, 24 March 2017, available at <https://webcache.googleusercontent.com/search?q=cache:7OxsMy1Lb6kJ:https://www.cambodiadaily.com/news/kem-ley-killer-gets-life-investigation-still-open-127017/+&cd=1&hl=en&ct=clnk&gl=kh> (last visited 4 July 2018).

⁴⁴ “Joint Letter on Investigation Into Killing of Kem Ley. Request for Cambodian Government to Create a Commission of Inquiry,” Human Rights Watch, 7 July 2017, available at <https://www.hrw.org/news/2017/07/07/joint-letter-investigation-killing-kem-ley> (last visited 4 July 2018).

⁴⁵ See, Article 14(3)(d) of the *International Covenant on Civil and Political Rights (“ICCPR”)*, 1966, available at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (last visited 4 July 2018), Articles 37(d), 40(2)(b) of the *Convention on the Rights of the Child*, 1989, available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (last visited 4 July 2018); Articles 31 and 38 of the *Constitution of the Kingdom of Cambodia*, 2008, available at [http://sithi.org/admin/upload/law/2008_02_19_Constitution\(KH\)_including%20Amendment%20\(1\).pdf](http://sithi.org/admin/upload/law/2008_02_19_Constitution(KH)_including%20Amendment%20(1).pdf) [official version in Khmer] and [http://sithi.org/admin/upload/law/2008_02_19_Constitution\(EN\)_including%20Amendment%20\(1\).pdf](http://sithi.org/admin/upload/law/2008_02_19_Constitution(EN)_including%20Amendment%20(1).pdf) [unofficial translation in English] (last visited 4 July 2018); Articles 29-30 of the *Criminal Procedure Code of Kingdom of Cambodia*, 2007, available at http://sithi.org/admin/upload/law/2007_Criminal_Procedure_2007_Khm.pdf [official version in Khmer] and http://sithi.org/admin/upload/law/2007_Criminal_Procedure_Code_in_Eng_2007.pdf [unofficial English translation] (last visited 2 July 2018); Articles 6, 50 of the *Law on Juvenile Justice*, 2016, available at <http://sithi.org/admin/upload/law/Law-on-Juvenile-Justice-2016-Khmer-version.pdf> [official version in Khmer] and <http://sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf> [unofficial translation in English] (last visited 4 July 2018).

⁴⁶ Article 300 of the *Criminal Procedure Code of the Kingdom of Cambodia* determines that “*The accused may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar*” and Article 304 determines that “*The Royal Prosecutor shall inform the accused of his right to defense by a lawyer of his own choice, or of one pursuant to the Law on the Bar*”, See *Criminal Procedure Code of Kingdom of Cambodia*, 2007, available at http://sithi.org/admin/upload/law/2007_Criminal_Procedure_2007_Khm.pdf [official version in Khmer] and http://sithi.org/admin/upload/law/2007_Criminal_Procedure_Code_in_Eng_2007.pdf [unofficial English translation] (last visited 4 July 2018).

⁴⁷ Article 29 of the *Law on the Bar* determines that “*A special account shall be established in this Fund for providing income to lawyers who defend poor people. This special account may receive donations or aid from private or international organizations or foreign governments provided for the defense of poor people. All lawyers are obligated to defend poor people according to the same procedures and internal rules and in the same manner as the defense of their own clients*” and Article 30 determines that “*“Poor people” are defined as those people who have no property, no income, or who receive insufficient income to support their living. The determination of “poverty” shall be accomplished by the Chief Judge of the Courts and the Chiefs of the Court Clerks following an on-site investigation*”, See *Law on the Bar*, 1995, available at https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_50.pdf [unofficial translation in English (last visited 4 July 2018)].

⁴⁸ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 47-48

⁴⁹ Article 4 of the *Law on the Bar* determines that “Apart from those lawyers who are members of the Bar Association, no one may perform this Profession”, See *Law on the Bar*, 1995, available at https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_50.pdf [unofficial translation in English (last visited 4 July 2018)].

⁵⁰ Article 29 of the *Law on the Bar* determines that “A special account shall be established in this Fund for providing income to lawyers who defend poor people. This special account may receive donations or aid from private or international organizations or foreign governments provided for the defense of poor people”, see *Law on the Bar*, 1995, available at https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_50.pdf [unofficial translation in English (last visited 4 July 2018)].

⁵¹ Following an assessment of eligibility by the Court in accordance with Article 30 of the *Law on the Bar* (see above), a request for legal aid is made to the BAKC which approves a request and assigns a lawyer. See Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 48.

⁵² Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 76.

⁵³ Article 301 of the *Code of Criminal Procedure* determines that “The assistance of a lawyer is compulsory if: 1. The case involves a felony; 2. The accused is a minor. If the accused has not selected a lawyer, a lawyer shall be appointed upon the initiative of the court president in accordance with the provisions of the *Law on the Bar*” See *Criminal Procedure Code of Kingdom of Cambodia*, 2007, available at http://sithi.org/admin/upload/law/2007_Criminal_Procedure_2007_Khm.pdf [official version in Khmer] and http://sithi.org/admin/upload/law/2007_Criminal_Procedure_Code_in_Eng_2007.pdf [unofficial English translation] (last visited 4 July 2018); Article 6 of the *Law on Juvenile Justice* determines that “Every minor suspected or accused of having committed an offence shall have the following basic procedural rights (...) the right to be assisted by a lawyer and to be assigned pro bono lawyer in accordance with the condition stipulated in *Law on the Status of Lawyers from the earliest possible time of procedure*” and Article 50 determines that “The minor shall be assisted by a lawyer during trial. In case the minor cannot afford a lawyer, the president of the court, via his or her own initiative, shall assign a pro-bono lawyer in accordance with the conditions stipulated in the law on statutes of lawyer. The expense on the defence and copy of case files is the burden of state,” see *Law on Juvenile Justice*, 2016, available at <http://sithi.org/admin/upload/law/Law-on-Juvenile-Justice-2016-Khmer-version.pdf> [official version in Khmer] and <http://sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf> [unofficial translation in English] (last visited 4 July 2018).

⁵⁴ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 60.

⁵⁵ Article 14(3) of the ICCPR specifies that “In the determination of **any criminal charge** against him, everyone shall be entitled to the following minimum guarantees, in full equality: ... (d) ... to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it” (emphasis added); The United Nations Principles and Guidelines on Access to Legal Aid In Criminal Justice Systems further outlines “States should ensure that anyone who is detained, arrested, suspected of, or charged with a **criminal offence punishable by a term of imprisonment or the death penalty** is entitled to legal aid at all stages of the criminal justice process” (emphasis added), See UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. 28 March 2013, UN Doc. A/RES/67/187, Principle 3, para. 20, available at http://cambodia.ohchr.org/sites/default/files/WebDOCs/DocProgrammes/UN_principles_on_legal_aid_March_2013_Eng.pdf (last visited 4 July 2018); see also UN Human Rights Committee, *Concluding observations on the second periodic report of Cambodia*, 27 April 2015, UN Doc. CCPR/C/KHM/CO/2, para. 17, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KHM/CO/2&Lang=En (last visited 4 July 2018).

⁵⁶ Article 14(3)(d) of the ICCPR enshrines the right “to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, **in any case where the interests of justice so require**, and without payment by him in any such case if he does not have sufficient means to pay for it” (emphasis added).

⁵⁷ The United Nations Principles and Guidelines on Access to Legal Aid In Criminal Justice Systems outlines “Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures” and “States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups” see UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. 28 March 2013, UN Doc. A/RES/67/187, Principle 10, para. 32-33.

⁵⁸ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 70.

⁵⁹ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 44.

⁶⁰ See UN Human Rights Council, *Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights*, 2 February 2018, UN DOC. A/HRC/37/64, para. 19, available at <http://cambodia.ohchr.org/sites/default/files/Ohchr->

[report/G1802262.pdf](#) (last visited 4 July 2018); “Legal aid support”, United Nations Human Rights Office of the High Commissioner, 28 September 2015, available at <http://cambodia.ohchr.org/en/rule-of-law/legal-aid-support> (last accessed 4 July 2018).

⁶¹ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 49; Pech Sotheary, “Legal aid budget to rise by half”, *Khmer Times*, 30 August 2017, available at <https://www.khmertimeskh.com/5080576/legal-aid-budget-rise-half/> (last visited 4 July 2018); Mech Dara, “Bar chief talks reform”, *The Phnom Penh Post*, 20 January 2017, available at <https://www.phnompenhpost.com/national/bar-chief-talks-reform> (last visited 4 July 2018); Ben Sokhean, “Bar members bemoan low payment for pro bono work”, *The Phnom Penh Post*, 17 October 2017, available at <https://www.phnompenhpost.com/national/bar-members-bemoan-low-payment-pro-bono-work> (last visited 4 July 2018).

⁶² Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 72.

⁶³ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 47.

⁶⁴ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 48.

⁶⁵ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 48.

⁶⁶ Ben Sokhean, “Bar members bemoan low payment for pro bono work”, *The Phnom Penh Post*, 17 October 2017; “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 48, 52.

⁶⁷ The United Nations Principles and Guidelines on Access to Legal Aid In Criminal Justice Systems outlines “*States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process*” (emphasis added), see UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. 28 March 2013, UN Doc. A/RES/67/187, Principle 3, para. 20; Ben Sokhean, “Bar members bemoan low payment for pro bono work”, *The Phnom Penh Post*, 17 October 2017; Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 67.

⁶⁸ See “Options for Approaches to Legal Aid Services Delivery in Cambodia, Prepared for the Council for Legal and Judicial Reform”, Draft Version 1.0, DANIDA, 2011, available at <http://cambodia.ohchr.org/sites/default/files/DANIDA%20Legal%20Aid%20for%20Cambodia%20ENG%20Sept%202011.pdf> (last visited 4 July 2018). However, CCHR noted that out of 340 cases it monitored at the Court of Appeal over 1 year, only one defendant’s lawyer raised the issue of preparation and he had asked the judges to read the facts of the case in order to defend his client. See “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, para. 2.1.4, Figure 5, available at https://cchrcambodia.org/admin/media/report/report/english/CCHR%20Report%20on%20Fair%20Trial%20Rights%20ENG_.pdf (last visited 4 July 2018).

⁶⁹ “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 8.

⁷⁰ Ben Sokhean, “Bar members bemoan low payment for pro bono work”, *The Phnom Penh Post*, 17 October 2017.

⁷¹ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 72.

⁷² See “Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study”, International Commission of Jurists (ICJ), October 2017, p. 22, available at <http://www.refworld.org/pdfid/5a212f144.pdf> (last visited 4 July 2018).

⁷³ Due to the lack of a state-based legal aid strategy, donors are discouraged from providing funding for legal aid. As a result of limited donor funding, numerous NGOs have collapsed or reduced their geographical and thematic scope, focusing on particular interest areas rather than general legal aid, see “Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study”, ICJ, October 2017, p. 23; Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 51; “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 47.

⁷⁴ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, pp. 51, 59.

⁷⁵ Reports are made that admission to the BAKC is not consistently based on qualifications, but rather on bribery or political affiliation. Admission to the BAKC often relies on payment of bribes, ranging from US\$20,000 to US\$50,000, plus fees associated with law school. This artificially restricts the number of lawyers practicing in Cambodia, see “Achieving Justice for Gross Human Rights Violations in Cambodia: Baseline Study”, ICJ, October 2017, p. 19; “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, pp. 40, 49-50.

⁷⁶ CEDAW, *Sixth periodic report submitted by Cambodia under article 18 of the Convention, due in 2017*, 12 June 2018, UN Doc. CEDAW/C/KHM/6, Annex, table 27, p. 8, available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KHM/INT_CEDAW_ADR_KHM_31420_E.pdf (last visited 4 July 2018).

⁷⁷ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 76.

⁷⁸ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final

Draft, June 2018, p. 51.

⁷⁹ Based on a population of 16,005,373 people in 2017, *In* “Population, total”, The World Bank, available at <https://data.worldbank.org/indicator/SP.POP.TOTL?locations=KH> (last visited 4 July 2018).

⁸⁰ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 52.

⁸¹ See UN Human Rights Committee, “Concluding observations on the second periodic report of Cambodia”, 27 April 2015, UN Doc. CCPR/C/KHM/CO/2, para. 17, available at <https://bit.ly/2HU0yBy> (last accessed 17 June 2018); “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 65; Kai Hauerstein, “Assessment Report: Assessing the provision of legal aid and proposing policy recommendations”, Final Draft, June 2018, p. 72.

⁸² See below Section 5.5, “Women Continue to be Disproportionately Affected”; Of Cambodia’s 1019 registered lawyers in 2017, only 206 (20%) were women, further compounding the challenges faced by women in accessing justice see “Sixth periodic report submitted by Cambodia under article 18 of the Convention, due in 2017”, UN Doc. CEDAW/C/KHM/6 12 June 2018, para. 216, p. 35, available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/KHM/CEDAW_C_KHM_6_7162_E.pdf (last visited 4 July 2018).

⁸³ See below Section 4, “Access to Legal Information”; “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 47.

⁸⁴ See above Section 2: “Independence and Impartiality of the Judiciary.”

⁸⁵ “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 8; See Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 73.

⁸⁶ “Justice versus corruption: Challenges to the independence of the judiciary in Cambodia”, IBAHRI, September 2015, p. 48.

⁸⁷ Of 558 defendants involved in monitored cases at the Court of Appeal between November 2016 and October 2017, 439 (79%) were represented by a lawyer. Of these, 6 were charged with a felony for which representation is mandatory. See “Fair Trial Rights in Cambodia: Monitoring at the Court of Appeal”, CCHR, June 2018, p. 37.

⁸⁸ See for example, “Fair Trial Rights in Cambodia”, Sixth Bi-annual Report, CCHR, December 2013, p. 29, available at [http://sithi.org/tmp/admin/article/files/CCHR_Sixth%20Bi-annual%20Reports%20on%20Fair%20Trial%20Rights_December_2013\(English\).pdf](http://sithi.org/tmp/admin/article/files/CCHR_Sixth%20Bi-annual%20Reports%20on%20Fair%20Trial%20Rights_December_2013(English).pdf) (last visited 4 July 2018); “Fair Trial Rights in Cambodia”, Fifth Bi-annual Report, CCHR, November 2012, p. 33, available at http://sithi.org/tmp/admin/article/files/2012_11_15_CCHR_TMP_5th_Bi-annual_Report%20Eng.pdf (last visited 4 July 2018).

⁸⁹ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 77.

⁹⁰ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 53.

⁹¹ Kai Hauerstein, *Assessment Report: Assessing the provision of legal aid and proposing policy recommendations*, Final Draft, June 2018, p. 77.

⁹² Article 3 of the *Law on the Bar* determines “The lawyer may advise and prepare documents in the judicial field. The lawyer may be assigned by the parties or the judge to fulfill the function of conciliator or mediator. The lawyer may be assigned as an arbitrator only where permitted by the law” and Article 4 determines “Apart from those lawyers who are members of the Bar Association, no one may perform this profession or provide legal consultation or prepare judicial documents for compensation, except when such legal consultation or preparation of documents is an ancillary job to their profession or is a function permitted by the law” see *Law on the Bar*, 1995, available at https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_50.pdf [unofficial translation in English (last visited 2 July 2018)].

⁹³ Although there is no global consensus on the universality of the right of public access to legal information, it remains one of the basic principles of the rule of law: see Leesi Ebenezer Mitee, “The Right of Public Access to Legal Information: A Proposal for its Universal Recognition as a Human Right”, *German Law Journal*, Vol. 18 No. 06, 2017, https://static1.squarespace.com/static/56330ad3e4b0733dcc0c8495/t/5a088d8c41920291507b818c/1510509965672/05_Vol_18_No_06A_Mitee.pdf (last visited 29 June 2018); Maeve McDonagh, “The Right to Information in International Human Rights Law”, Oxford University Press, 20 February 2013, available at <http://www.corteidh.or.cr/tablas/r30698.pdf> (last visited 29 June 2018). Under Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR), the public has the “freedom to seek, receive and impart information and ideas of all kinds”, which include to access laws passed by their government, while General Comment n°34, which interprets that article, specifically notes that the public has “a right of access to information held by public bodies”: see *ICCPR General Comment*, 12 September 2011, UN Doc. CCPR/C/GC/34 para. 18, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> (last visited 29 June 2018). Cambodia is a signatory to the ICCPR, and the ICCPR applies to Cambodian laws through its Constitution: see Article 31: *The Kingdom of Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women’s and children’s rights.*

Everyone must be accountable to laws that are publicly promulgated and consistent with international human rights standards. This obligation to provide access to information was highlighted by the UN Special Rapporteur on the situation

In the present submission, the term pre-trial detention is to refer to the imprisonment of Defendants before the date a verdict of guilt is issued in first instance.

¹³⁸ Article 2013 of the *Cambodian Code of Criminal Procedure* (“CPC”): “*In principle, an accused shall have freedom. In special cases, the accused person can be temporarily detained under the conditions stated in this Section.*” See also Article 204, which provides that “*Pre-trial detention can be applied only in the case of felony or misdemeanor charges in which the law sets the punishment of imprisonment for 1 (one) year or more*” and Article 205, which reads: “*Pre-trial detention may be imposed when the detention is necessary to:*

1. *stop the offense or prevent the offense from happening again;*
2. *prevent any interferences on witnesses or victims or prevent any collusion between the accused person and the accomplice;*
3. *maintain evidence or material leads;*
4. *ensure the accused is kept for the court to decide according to its procedures;*
5. *protect the security of the accused;*
6. *maintain public order to avoid any chaos caused by the offense.*”

See *Cambodian Code of Criminal Procedure*, 2007, [official translation] available at http://sithi.org/admin/upload/law/2007_Criminal_Procedure_Code_in_Eng_2007.pdf (last visited 4 July 2018); see also Article 38 of the *Constitution of the Kingdom of Cambodia*: “The prosecution, arrest, or detention of any person shall not be done except in accordance with the law.”

¹³⁹ UN Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith, “End of mission statement”, OHCHR, 14 March 2018, referring to the “prevalence” of pre-trial detention; Professor Rhona Smith, UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, 27 July 2017, UN Doc. A/HRC/36/61, para. 20, available at [http://cambodia.ohchr.org/sites/default/files/Annual-reports/SR%20Report%20\(G1722562\).pdf](http://cambodia.ohchr.org/sites/default/files/Annual-reports/SR%20Report%20(G1722562).pdf) (last visited 4 July 2018), referring to the “extensive” use of pre-trial detention.

¹⁴⁰ See “Highest to Lowest - Pre Trial Detainees/Remand Prisoners”, World Prison Brief, available at http://www.prisonstudies.org/highest-to-lowest/pre-trial-detainees?field_region_taxonomy_tid=All (last visited 4 July 2018), which also notes that Cambodia currently ranks 9 of 217 countries in terms of pre-trial detainees/prisoners on remand; see also Mech Dara, “Prison numbers jump 20 percent”, The Phnom Penh Post, 23 February 2017, available at <https://www.phnompenhpost.com/national/prison-numbers-jump-20-percent> (last visited 4 July 2018).

During a visit to Correctional Centre 1 in October 2016, the Special Rapporteur on the Situation of Human Rights in Cambodia was informed that 1,512 of the 4,736 detainees were either in provisional detention or were awaiting the outcome of appeal processes. UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, 27 July 2017, UN Doc. A/HRC/36/61, para. 20; UN Special Rapporteur on the situation of human rights in Cambodia, Professor Rhona Smith, “End of mission statement”, OHCHR, 14 March 2018, referring to the “prevalence” of pre-trial detention; UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, 27 July 2017, UN Doc. A/HRC/36/61, para. 20, referring to the “extensive” use of pre-trial detention; see also “Rights at a Price: Life Inside Cambodia’s Prisons”, Cambodian League for the Promotion and Defense of Human Rights, 25 January 2015, available at http://www.licadho-cambodia.org/collection/25/life_inside_cambodia_prison (last visited 4 July 2018); Alice Cuddy & Chhay Channyda, “Pre-Trial Lockup Rules Flouted”, The Phnom Penh Post, 29 May 2015, available at <https://www.phnompenhpost.com/national/pre-trial-lockup-rules-flouted> (last visited 4 July 2018).

¹⁴¹ In many cases, the length of pre-trial detention is contrary to both international and domestic law. See: Articles 208 - 214 of the *CPC*. In international law, “prompt” justification must be determined on a case-by-case-basis, however the delay between the arrest of an accused and the time before the accused is brought before a judicial authority “should not exceed a few days.” Human Right Committee, Communication No. 373/1989, *L. Stephens v. Jamaica* (Views adopted on 18 October 1995), In UN Doc. GAOR, A/51/40 (vol. II), p. 9, para. 9.6, available at <http://hrlibrary.umn.edu/undocs/session55/vws37355.htm> (last visited 4 July 2018) (emphasis added). In addition, human rights law requires that if a person is not tried within a reasonable time after his/her arrest or detention, he/she must be released; Art 9(3) of the *ICCPR*.

¹⁴² Four staff members of ADHOC, Ny Sokha, Yi Soksan, Nay Vanda and Lim Mony – and former ADHOC staff member, who was the deputy secretary-general of the National Election Committee at the time, Ny Chakrya, were detained for 427 days without trial between 28 April 2016 and 29 June 2017. See **Annex 1 (entry 1)**.

¹⁴³ See **Annex 1 (entry 17)**; see also Niem Chheng & Ananth Baliga, “Kem Sokha’s pre-trial detention extended by six months”, The Phnom Penh Post, 5 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-pre-trial-detention-extended-six-months> (last visited 4 July 2018); Niem Chheng & Ananth Baliga, “Kem Sokha’s Detention Upheld as Guards Scuffle with Ex-Leader’s Supporters Outside Courthouse”, The Phnom Penh Post, 27 March 2018, available at <https://www.phnompenhpost.com/national/kem-sokhas-detention-upheld-guards-scuffle-ex-leaders-supporters-outside-courthouse> (last visited 4 July 2018).

¹⁴⁴ Article 445 of the *Cambodian Criminal Code*, for “supplying or making accessible to a foreign state or its agents information, processes, objects, documents, computerised data or files which are liable to prejudice the national defence”, available at http://www.sithi.org/admin/upload/law/Criminal_Code_Book_with_cover_Jan_2014.pdf (last visited 4 July 2018); **Annex 1 (entry 44)**; see also Mech Dara, “‘It is revenge’: Bail denied again for RFA reporters accused of

espionage”, 19 April 2018, The Phnom Penh Post, available at <https://www.phnompenhpost.com/national/it-revenge-bail-denied-again-rfa-reporters-accused-espionage> (last visited 4 July 2018); Niem Chheng, “RFA journalists questioned”, The Phnom Penh Post, 1 June 2018, available at <https://www.phnompenhpost.com/national/rfa-journalists-questioned> (last visited 4 July 2018).

¹⁴⁵ See **Annex 1 (entry 15)**; see also David Boyle and Hul Reaksmeay, “Cambodian Court Postpones Trial of Australian Who Flew Drone at Rally”, Voice of America, 16 June 2018, available at <https://www.voacambodia.com/a/cambodian-court-postpones-trial-of-australian-who-flew-drone-at-rally/4440919.html> (last visited 18 June 2018); Erin Handley & Kim Sarom, “Jailed Australian Filmmaker James Ricketson Makes Plea for Release, 11 January 2018, available at <https://www.phnompenhpost.com/national/jailed-australian-filmmaker-james-ricketson-makes-plea-release> (last visited 4 July 2018).

¹⁴⁶ Chhorn Phearun & Hannah Hawkins, “Drugs War Leaves Prisons ‘On Point of Collapse’”, The Cambodia Daily, 23 June 2017, available at <https://webcache.googleusercontent.com/search?q=cache:BHxrMxxtWUIJ:https://www.cambodiadaily.com/news/drugs-war-leaves-prisons-on-point-of-collapse-131678/+&cd=1&hl=en&ct=clnk&gl=kh> (last visited 4 July 2018); Niem Chheng & Erin Handley, “Mixed results in Cambodia’s drug war: officials”, The Phnom Penh Post, 6 February 2018, available at <https://www.phnompenhpost.com/national/mixed-results-cambodias-drug-war-officials> (last visited 4 July 2018); Martin de Bourmont & Khouth Sophak Chakrya, “Is Cambodia’s war on drugs working?”, The Phnom Penh Post, 14 June 2017, available at <https://www.phnompenhpost.com/national-post-depth/cambodias-war-drugs-working> (last visited 4 July 2018). In 2016 alone, 40% of those detained were jailed for drug offences, see Mech Dara, “Prison numbers jump 20 percent”, The Phnom Penh Post, 23 February 2017.

¹⁴⁷ “Cambodia’s Prey Sar Prison Like Being ‘in Hell.’ Former Inmate Says”, Radio Free Asia, 3 March 2017, available at <https://www.rfa.org/english/news/myanmar/cambodia/prison-03032017132739.html> (last visited 4 July 2018); “Rights at a Price: Life Inside Cambodia’s Prisons”, LICADHO, 22 January 2015, available at <https://kh.boell.org/en/2015/01/22/rights-price-life-inside-cambodias-prisons> (last visited 4 July 2018); “Improving prison conditions and prisoners’ treatment”, OHCHR Cambodia, 26 January 2015, available at <http://cambodia.ohchr.org/en/prison-reform/improving-prison-conditions-and-prisoners-treatment> (last visited 4 July 2018); UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, 27 July 2017, UN Doc. A/HRC/36/61, para. 20, referring to the “extensive” use of pre-trial detention; UN Human Rights Committee, *Concluding observations on the second periodic report of Cambodia*, 27 April 2015, UN Doc. CCPR/C/KHM/CO/2, para. 14, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KHM/CO/2&Lang=En (last visited 4 July 2018).

¹⁴⁸ UN Human Rights Committee, *List of issues in relation to the second periodic report of Cambodia, Replies of Cambodia to the list of issues, Addendum*, 4 March 2015, UN Doc. CCPR/C/KHM/Q/2/Add.1, para. 14, available at <http://undocs.org/en/CCPR/C/KHM/Q/2/Add.1> (last visited 4 July 2018).

¹⁴⁹ Art. 203 of the *CPC*: “to either stop the offense or prevent its recurrence, prevent interference with witnesses or victims, protect evidence, ensure the Accused’s appearance, protect her/his security, or avoiding ‘chaos’ cause by the offense.”

¹⁵⁰ Adopted in 2014 the Ministry of Justice with the assistance of OHCHR, *In “Reforming the Pre-Trial Detention Process to Prevent Arbitrary Detention”*, OHCHR Cambodia, March 2014, available at <http://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/2-RLU-SS.pdf> (last visited 4 July 2018); See also UN Human Rights Council, *Role and achievements of the Office of the United Nations High Commissioner for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights*, Report of the Secretary-General, OHCHR, 17 August 2017, UN Doc. A/HRC/36/32, para. 31, available at <https://bit.ly/2jJXd1b> (last visited 4 July 2018).

¹⁵¹ See e.g. Kem Sokha, **Annex 1 (entry 17)** who saw his latest bail request denied on the grounds that the investigations were still ongoing and that it would “cause trouble” if he were released. The Court also seemingly believed that he would flee if he were released, see Khy Sovuthy, “Kem Sokha again denied bail”, Khmer Times, 6 June 2018, available at <https://www.khmertimeskh.com/50497585/kem-sokha-again-denied-bail/> (last visited 4 July 2018); James Ricketson **Annex 1 (entry 15)** saw his bail request denied on the grounds that the investigation was not finished, *In* Erin Handley, “Updated: Jailed Australian filmmaker James Ricketson denied bail”, The Phnom Penh Post, 30 January 2018, available at <https://www.phnompenhpost.com/national/updated-jailed-australian-filmmaker-james-ricketson-denied-bail> (last visited 4 July 2018); Uon Chhin and Yeang Sothearin, former RFA journalists facing charges of treason, **Annex 1 (entry 44)**: despite the passports and ID cards for both defendants having been submitted to the court and the fact that their families had promised that they would not escape, the judge said he still feared that the defendants would try to leave the country, Mech Dara, “It is revenge’: Bail denied again for RFA reporters accused of espionage”, The Phnom Penh Post, 19 April 2018.

¹⁵² “Mothers behind bars: the impact of detention on women and their children”, *Licadho*, 26 May 2015, available at https://www.licadho-cambodia.org/collection/28/mothers_behind_bars_impact (last visited 4 July 2018). *For more details see NGO-CEDAW/Consortium of Cambodian NGOs thematic submissions on Gender*, pp. 4-5.

¹⁵³ As identified in Article 40 of the *Penal Code*, and in the *Law on Juvenile Justice* in Article 28 and Chapter 10 on Diversion. See also; Article 5 of the *Law on Juvenile Justice. Joint Cambodian NGO Report on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in the Kingdom of Cambodia*, ADHOC, Cambodian Defenders Projects (CDP), (LICADHO, Transcultural Psychosocial Organization (TPO), Cambodian Human Rights Action Committee (CHRAC), October 2010, para 11 (42), available at [UPR CAMBODIA - Joint-Submission on Access to Justice](http://tpocambodia.org/wp-content/uploads/2015/08/Joint-</p></div><div data-bbox=)

Cambodian-NGO-CAT-Report-06-10-10_English.pdf (last visited 4 July 2018); Article 40, *Law on Juvenile Justice*; International guidelines recognize the significance of seeking alternative methods of restorative justice outside the judicial system for juveniles; Committee on the Rights of the Child, *General comment N. 10, Children's Rights in Juvenile Justice*, 25 April 2007, UN Doc. CRC/C/GC/10, paras. 24-25 available at <http://www.refworld.org/docid/4670fca12.html> (last visited 4 July 2018); UN General Assembly, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, 28 March 2013, UN Doc. A/RES/67/187, paras. 53(f-h), available at http://cambodia.ohchr.org/sites/default/files/WebDOCs/DocProgrammes/UN_principles_on_legal_aid_March_2013_Eng.pdf (last visited 4 July 2018).

¹⁵⁴ On 25 June 2018, the Ministry of Social Affairs, Veterans and Youth Rehabilitation announced the opening of the first youth detention center in the country, to be built in Kandal Province, see Chea Vannak, “First youth detention centre planned”, *Khmer Times*, 27 June 2018, available at <https://www.khmertimeskh.com/50505355/first-youth-detention-centre-planned/> (last visited 4 July 2018); Bona Khoy, “Updated Situation Analysis of Children and Women and in Cambodia”, UNICEF, 2017, Part 5.4. on Juvenile Justice, available at https://www.unicef.org/cambodia/UNICEF_Cambodia_SitAn_2018.pdf (last visited 4 July 2018); UN Human Rights Council, *Access to Justice for Children: Report of the United Nations High Commissioner for Human Rights*, 16 December 2013, A/HRC/25/35, 5 para 11. See also for example, Article 39 of the *Law on Juvenile Justice*: ‘The minor less than 14 years of age shall not be placed in pre-trial detention. If a detained minor is found to be less than 14 years old, the Investigating Judge shall issue the non-suit order and order the minor’s immediate release.’ However, CCHR recorded the presence of a child below the age of 14 years who had been held in detention: “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, para. 2.2.7, available at <https://cchrcambodia.org/admin/media/report/report/english/CCHR%20Report%20on%20Fair%20Trial%20Rights%20ENG.pdf> (last visited 4 July 2018). See also: Diem Chheng, “Adhoc Examining Minor’s Jailing”, *The Phnom Penh Post*, 4 April 2017, available at <https://www.phnompenhpost.com/national/adhoc-examining-minors-jailing-0> (last visited 4 July 2018). In Article 5 of the *Law on Juvenile Justice*, there is a further obligation on the judiciary to “Consider primarily on actions concerning to the best interest of minors and particular to ensure the minors’ right to life and maximum survival and development”. However, despite the Ministry of Social Affairs promising the erection of a new juvenile rehabilitation centre in 2016, same has still not been erected. Juvenile detainees currently live alongside adult prisoners and are subjected to the same treatment. Erin Handley, “Cambodia to Soon Establish Juvenile Prison: Social Affairs”, *The Phnom Penh Post*, 18 August 2017, available at <https://www.phnompenhpost.com/national/cambodia-soon-establish-juvenile-prison-social-affairs> (last visited 4 July 2018).

¹⁵⁵ *Law on Juvenile Justice*, Ministry of Social Affairs, Veterans and Youth Rehabilitation, 2016, available at <http://www.sithi.org/admin/upload/law/Law-on-Juvenile-Justice%202016-English-Final-Version.pdf> (last visited 4 July 2018). For more information on juvenile justice see below, paragraph xx.

¹⁵⁶ Chea Vannak, “First youth detention centre planned”, *Khmer Times*, 27 June 2018, available at <https://www.khmertimeskh.com/50505355/first-youth-detention-centre-planned/> (last visited 1 July 2018)

¹⁵⁷ UN Special Rapporteur on the Situation of Human Rights in Cambodia, Professor Rhona Smith, “End of mission statement”, 14 March 2018, p. 4.

¹⁵⁸ Article 14(2) of the *ICCPR*.

¹⁵⁹ “Prisoner Uniforms and the Presumption of Innocence”, *Fair Trial Rights Newsletter*, CCHR, June 2017, Issue 2, available at https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence_Eng.pdf (last visited 4 July 2018); “Fair Trial Rights in Cambodia: Monitoring at the Court of Appeal”, CCHR, June 2018, pp. 20-21, Figure 11. The right to be considered innocent until proven guilty is enshrined in international law – through Article 11(1) of the *Universal Declaration of Human Rights* and Article 14(2) of the *ICCPR*. These rights are incorporated into Cambodian national law pursuant to Article 31 of the *Cambodian Constitution*, as recognized by Decision No. 092/003/2007 of the Constitutional Council dated 10 July 2007.

¹⁶⁰ For more information on the advocacy of CCHR in connection with Prison Uniforms and Fair Trial Rights, please find the following: “Prisoner Uniforms and the Presumption of Innocence”, *Fair Trial Rights Newsletter*, CCHR, June 2017, Issue 2, available at https://cchrcambodia.org/admin/media/newsletter/newsletter/english/2017-06-05-CCHR-FTR-Newsletter-on-Prisoner-Uniform-and-Presumption-of-Innocence_Eng.pdf (last visited 4 July 2018); “Fair Trial Analysis: Prison Uniforms and Fair Trial Rights”, *Fair Trial Newsletter*, CCHR, April 2011, Issue 3, available at <https://cchrcambodia.org/admin/media/newsletter/newsletter/english/CCHR%20Newsletter%203%20Prison%20Uniforms%20and%20Fair%20Trial%20Rights-%20April%202011%20English.pdf> (last visited 4 July 2018); see also “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, p. 19, para. a.

¹⁶¹ More and more defendants appear in civilian clothing. See e.g. in 18 January 2018, a defendant charged with drug trafficking and sentenced to 5 years of imprisonment by the Takeo Court of first instance was transported to the Court of Appeal for hearing his appeal against the decision civilian clothes, *In* “Checklist Details”, CCHR Fair Trial Rights Monitoring Database, available at http://tmp.sithi.org/tmpapplication/data/advanced_search/view/detail.php?id=911 (last visited 4 July 2018); CNRP former president, Kem Sokha, also appeared in Court (for the appeal on his request for provisional release), wearing his own clothing on 1 February 2018, See photo in “Kem Sokha’s hearing at the Court of Appeal has already begun”, *Fresh News Asia*, 1 February 2018, available at <http://www.freshnewsasia.com/index.php/en/localnews/77476-2018-02-01-01-38-52.html> (last visited 4 July 2018); for more information on the case of Kem Sokha, see **Annex 1, (entry 17)**.

¹⁶² Article 14(3)(g) of the *ICCPR* guarantees the right “*not to be compelled to testify against himself or to confess guilt*”. When a suspect or accused gives a confession, it must be done in the absence of any direct or indirect, physical or psychological coercion; UN Human Rights Committee, *General Comment N°32, Article 14: Right to equality before courts and tribunals and to a fair trial*, 23 August 2007, UN Doc. CCPR/C/GC/32, para. 41, available at https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/32&Lang=en (last visited 4 July 2018); *see also*: UN Human Rights Committee, *Deolall v. Guyana, Communication 912/2000*, 2000, UN Doc. CCPR/C/82/D/912/2000 (2004), para. 5.1, available at http://www.worldcourts.com/hrc/eng/decisions/2004.11.01_Deolall_v_Guyana.htm (last visited 4 July 2018); UN Human Rights Committee, *Singarasa v. Sri Lanka, Communication 1033/2001*, 2001, UN Doc. CCPR/C/81/D/1033/2001 (2004), para. 7.4, available at <http://hrlibrary.umn.edu/undocs/html/1033-2001.html> (last visited 4 July 2018); UN Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan*, 2004, Communication 1263/2004 and 1264/2004, UN Doc. CCPR/C/94/D/1263–1264/2004 (2008), para. 8.3, available at http://www.worldcourts.com/hrc/eng/decisions/2008.10.20_Khuseynova_v_Tajikistan.htm (last visited 4 July 2018).

¹⁶³ CCHR Fair Trial Monitoring Report describes how the investigating Appeal judges failed to inform the defendant about his right to remain silent in more than three out of five cases (65%); “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, para 2.2.3, figure 10.

¹⁶⁴ For instance, CCHR’s monitoring of the Court of Appeal between 2014 and 2017 showed that cases the defendant alleged that threats were made to coerce him/her into confessing to the alleged crime went from 3% of all cases in 2014–2015 to 4% of the monitored cases in 2016–2017. Allegations that violence or torture was used to coerce the defendant into confessing to the alleged crime went from 4% in 2014–2015 to 7% in 2016–2017, *see* “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, Cambodian Centre for Human Rights, June 2018, para 3.2.3.

¹⁶⁵ International law obligates that the burden of proof be on the party that took the subject statement to demonstrate that it was not made under duress, yet in Cambodia, in Cambodia, the burden is often on the defense to prove coercion; *see* UN Human Rights Committee, *Nallaratnam v. Sri Lanka, Communication No. 1033/2001*, 2004, UN Doc. CCPR/C/81/D/1033/2001 (2004), para. 7.4, available at <http://hrlibrary.umn.edu/undocs/html/1033-2001.html> (last visited 4 July 2018); UN Human Rights Committee, *General Comment N°32, Article 14: Right to equality before courts and tribunals and to a fair trial*, 23 August 2007, UN Doc. CCPR/C/GC/32, para. 41; *see also*: UN Human Rights Committee, *Kelly v. Jamaica, Communication 253/1987*, 1987, UN Doc. CCPR/C/41/D/253/1987 (1991), para. 5.5, available at <http://hrlibrary.umn.edu/undocs/session41/253-1987.html> (last visited 4 July 2018); UN Human Rights Committee, *Singarasa v. Sri Lanka, Communication 1033/2001*, 2001, UN Doc. CCPR/C/81/D/1033/2001 (2004), para. 7.4, available at <http://hrlibrary.umn.edu/undocs/html/1033-2001.html> (last visited 4 July 2018); UN Human Rights Committee, *Khuseynova and Butaeva v. Tajikistan, Communication 1263/2004 and 1264/2004*, 2008, UN Doc. CCPR/C/94/D/1263–1264/2004 (2008), para. 8.3, available at http://www.worldcourts.com/hrc/eng/decisions/2008.10.20_Khuseynova_v_Tajikistan.htm (last visited 4 July 2018).

¹⁶⁶ Mech Dara & Daphne Chen, “Government forms new anti-torture org in bid for UN compliance”, The Phnom Penh Post, 29 November 2017, available at <https://www.phnompenhpost.com/national/government-forms-new-anti-torture-org-bid-un-compliance> (last visited 4 July 2018).

¹⁶⁷ “United Nations removes Kingdom from list of nations that apply torture”, The Phnom Penh Post, 29 June 2018, available at <https://www.phnompenhpost.com/national/united-nations-removes-kingdom-list-nations-apply-torture> (last visited 4 July 2018); and OHCHR, “OPCAT: Noncompliance with Article 17”, available at <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Article17.aspx> (last visited 4 July 2018).

¹⁶⁸ *See* paragraph 3 on Legal Aid in Cambodia.

¹⁶⁹ Art. 14 (3)(e) of the *ICCPR*; Art.321, 324, 326 of the *CPC*.

¹⁷⁰ In the case of Mother Nature activists Hun Vannak and Doem Kundy charged with “*incitement to commit a felony*” and making unauthorized recordings of a person in “*a private place*”, the judge relied on evidence from the prosecution that lacked concrete evidence, *see Annex 1 (entry 14)*; *see also* Phak Seangly, “‘Lack of Proof’ in Mother Nature Activists’ Hearing”, The Phnom Penh Post, 26 January 2018, available at <https://www.phnompenhpost.com/national/lack-proof-mother-nature-activists-hearing> (last visited 4 July 2018).

¹⁷¹ The UN SRHRC rightly noted that “*it appears that different judges apply different evidentiary standards of proof*”, *see* Professor Rhona Smith, UN Special Rapporteur on the Situation of Human Rights in Cambodia, “Report of the Special Rapporteur on the situation of human rights in Cambodia”, UN Doc. A/HRC/36/61, 27 July 2017, para. 54.

For instance, during the appeal of Tep Vanny, the accused was ordered to remain silent by the prosecutor and video evidence was denied despite the request of the defense’s counsel, “Tep Vanny Convicted Again as Para-Police Attack Supporters”, LICADHO, February 2017, available at <http://www.licadho-cambodia.org/pressrelease.php?perm=418> (last visited 4 July 2018). *For more information* on the case of Tep Vanny, *see Annex 1 (entry 39)*; In the case of Kem Sokha, the investigating judge rejected the accused’s request that he interview a US government official in connection with the former oppositions leaders treason, Mech Dara & Andrew Nachemson, “Sokha’s Witness Request Denied”, The Phnom Penh Post, 9 February 2018, available at <https://www.phnompenhpost.com/national/sokhas-witness-request-denied> (last visited 4 July 2018); for more information on the case of Kem Sokha, *see Annex 1 (entry 17)*.

¹⁷² The practice of the ECCC may prove useful guidance, particularly its internal rules as well as paragraphs 204 to 209 of the case 002/01 Appeal Judgement, *See* Extraordinary Chambers in the Courts of Cambodia, “Appeal Judgement”, Supreme Court Chamber, 23 November 2016, Case File/Dossier N° 002/19-09-2007-ECCC/SC, available at <https://www.eccc.gov.kh/sites/default/files/documents/court/2016-11->

[OENG .pdf](#) (last visited 4 July 2018). Juveniles are also permitted privacy from publication - *See* CRC General Comment 10, para. 64. “*No information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe. It means that a public authority should be very reluctant with press releases related to offenses allegedly committed by children and limit them to very exceptional cases.*” Committee on the Rights of the Child, *General Comment N° 10 (2007): Children’s rights in juvenile justice*, 25 April 2007, UN. Doc. CRC/C/GC/10, para. 64, available at <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> (last visited 4 July 2018).

¹⁹² According to CCHR Monitoring Project, all trials were open to the public. There was only one instance where the Court conducted the hearing in closed court as a result of protecting social morality, as the juvenile was charged with rape. “Fair Trial Rights in Cambodia, Monitoring at the Court of Appeal”, CCHR, June 2018, para 2.2.7, figure 14(b).